

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO,

Debtor.¹

PROMESA

Title III

No. 17-BK-3283-LTS

(Jointly Administered)

AMBAC ASSURANCE CORPORATION,

Movant,

-v-

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO
RICO,

Respondent.

No. 17-BK-3283-LTS

Re: ECF Nos. 15520, 15495, 15567

¹ The Debtors in these Title III Cases, along with each Debtor's respective Title III case number and the last four (4) digits of each Debtor's federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17-BK-3283- LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation ("COFINA") (Bankruptcy Case No. 17-BK-3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority ("HTA") (Bankruptcy Case No. 17-BK-3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico ("ERS") (Bankruptcy Case No. 17-BK-3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority ("PREPA") (Bankruptcy Case No. 17- BK-4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority ("PBA") (Bankruptcy Case No. 19-BK-5233-LTS) (Last Four Digits of Federal Tax ID: 3801) (Title III case numbers are listed as Bankruptcy Case numbers due to software limitations).

**URGENT MOTION OF THE FINANCIAL OVERSIGHT AND MANAGEMENT
BOARD FOR PUERTO RICO FOR LEAVE TO FILE SUR-REPLY REGARDING
AMBAC ASSURANCE CORPORATION'S MOTION FOR AN ORDER DIRECTING
CASH RULE 2004 DISCOVERY**

To the Honorable United States Magistrate Judge Judith Dein:

The Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), on its own behalf and in its capacity as the sole Title III representative of the Commonwealth of Puerto Rico pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”),² respectfully submits this urgent motion (the “Motion for Leave”), pursuant to Section III.L. of the *Thirteenth Amended Notice, Case Management and Administrative Procedures* [ECF No. 13512-1] (the “Case Management Procedures”), for entry of an order, substantially in the form annexed hereto as Exhibit A (the “Proposed Order”), granting leave to file a sur-reply of no longer than 5 pages in length in response to the *Reply of Ambac Assurance Corporation to the Financial Oversight and Management Board for Puerto Rico’s Opposition to Motion for an Order Directing Cash Rule 2004 Discovery* [ECF No. 15567] (the “Reply”) filed by Ambac Assurance Corporation (“Ambac”). In support of its Motion for Leave, the Oversight Board respectfully states as follows:

PRELIMINARY STATEMENT

1. The Oversight Board seeks leave to file a sur-reply of no more than 5 pages in order to address several factual misstatements and mischaracterizations made by Ambac in its Reply. The Reply contains numerous factual assertions regarding the Oversight Board’s cash analysis that are not correct, and it repeatedly misstates or mischaracterizes statements made in the Oversight Board’s Objection (as defined below). The Oversight Board may be prejudiced if it is not afforded

² PROMESA has been codified at 48 U.S.C. §§ 2101-2241.

an opportunity to correct Ambac's misstatements and mischaracterizations. The Oversight Board has conferred with counsel for Ambac, and Ambac opposes the requested relief.

BACKGROUND

2. On November 20, 2020, Ambac filed *Ambac Assurance Corporation's Motion for an Order Directing Cash Rule 2004 Discovery from the Financial Oversight and Management Board for Puerto Rico* [ECF No. 15220] (the "New Cash Motion").

3. On December 23, 2020, the Oversight Board filed the *Objection of the Financial Oversight and Management Board for Puerto Rico to Motion by Ambac Assurance Corporation for an Order Directing Cash Rule 2004 Discovery* [ECF No. 15495] (the "Objection").

4. On January 8, 2021, Ambac filed its Reply. The Reply contains numerous factually inaccurate assertions regarding the Oversight Board's cash restriction analyses that are the subject of the New Cash Motion, including incorrect statements about how the Oversight Board's advisors prepared summaries of their analyses. It also repeatedly misstates points made by the Oversight Board in its Objection.

5. To address Ambac's misstatements and mischaracterizations, the Oversight Board seeks leave to file the 5 page sur-reply attached hereto as **Exhibit B** (the "Proposed Surreply").

ARGUMENT

6. Pursuant to Section III.L of the Case Management Procedures, sur-replies are permitted only if authorized by the Court. Sur-replies are appropriate where, as here, "a party has not had the opportunity to contest matters introduced for the first time in the opposing party's reply." *Animal Welfare Institute v. Martin*, 588 F. Supp. 2d 70, 81 (D. Me. 2008); *United States ex rel. Pogue v. Diabetes Treatment Ctrs. Of Am., Inc.*, 238 F. Supp. 2d 270, 276-77 (D.D.C. 2002)

(“The standard for granting leave to file a surreply is whether the party making the motion would be unable to contest matters presented to the court for the first time in the opposing party’s reply.”).

7. Ambac’s Reply contains inaccurate factual assertions regarding the process by which the Oversight Board’s cash restriction analysis was conducted that were not previously raised in the New Cash Motion. Ambac incorrectly asserts in its Reply—for the first time—that the Oversight Board’s legal counsel provided “assumptions” to its nonlawyer advisors, on which those nonlawyer advisors relied. The Reply also repeatedly mischaracterizes or misstates points made by the Oversight Board in its Objection. It incorrectly asserts, for example, that the Oversight Board admitted it intends to utilize a report of its cash restriction analysis as evidence at a confirmation hearing, when the Objection in fact states the opposite.

8. Without the Proposed Surreply, the Oversight Board will not have the opportunity to correct Ambac’s inaccurate assertions and mischaracterizations. The Court will also benefit from the Proposed Surreply, because it will correct the inaccurate assertions in the Reply and clarify the issues presented by the New Cash Motion.

CONCLUSION

9. For the foregoing reasons, the Oversight Board respectfully requests that the Court grant this urgent motion and permit the Oversight Board to file the Proposed Surreply.

CERTIFICATION

10. Pursuant to Section I.H of the Case Management Procedures, undersigned counsel certifies that they have engaged in reasonable, good-faith communications with counsel for Ambac. Moreover, in accordance with Local Bankruptcy Rule 9013-1(a)(2), undersigned counsel certifies that they have carefully examined the matter and concluded that there is a true need for expedited consideration of the Urgent Motion, and that the Oversight Board has not created the

urgency through lack of due diligence on its part. The undersigned further certifies the Oversight Board made a *bona fide* and good faith effort to resolve the matter without a hearing. As noted above, Ambac opposes the Oversight Board's requested relief in the Urgent Motion.

WHEREFORE, it is respectfully requested that the Court enter the Proposed Order authorizing the Oversight Board to file its Proposed Surreply, and to grant any other remedy that the Court may deem just and necessary.

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Dated: January 13, 2021
San Juan, Puerto Rico

Respectfully submitted,

/s/ Hermann D. Bauer

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*Attorneys for the Financial Oversight and
Management Board for Puerto Rico, on its
own behalf and as representative of the
Commonwealth of Puerto Rico*

EXHIBIT A

Proposed Order

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
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THE COMMONWEALTH OF PUERTO RICO,

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[PROPOSED] ORDER ON THE FINANCIAL OVERSIGHT AND MANAGEMENT BOARD FOR PUERTO RICO’S URGENT MOTION FOR LEAVE TO FILE SURREPLY REGARDING AMBAC ASSURANCE CORPORATION’S MOTION FOR AN ORDER DIRECTING CASH RULE 2004 DISCOVERY

Upon consideration of the urgent motion (the “Urgent Motion”) filed by the Financial Oversight and Management Board for Puerto Rico (the “Oversight Board”), on its own behalf and in its capacity as the sole Title III representative of the Commonwealth of Puerto Rico pursuant to section 315(b) of the *Puerto Rico Oversight, Management, and Economic Stability Act* (“PROMESA”), 48 U.S.C. §§ 2101–224; and it appearing that (i) the Court has jurisdiction over this Urgent Motion pursuant to 28 U.S.C. § 1331 and 48 U.S.C. § 2166(a); (ii) venue of this proceeding and the Urgent Motion is proper under 28 U.S.C. § 1391(b) and 48 U.S.C. § 2167(a); (iii) notice of the Urgent Motion was adequate and proper under the circumstances and no further or other notice need be given; and after due deliberation and sufficient cause appearing therefor, it is hereby **ORDERED** that:

1. The Urgent Motion is **GRANTED** as set forth herein.
2. The Oversight Board is authorized to file the Proposed Surreply⁴ tendered as Exhibit B to the Urgent Motion.
3. The Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: January __, 2021

UNITED STATES MAGISTRATE JUDGE

⁴ Capitalized terms used but not defined herein have the meanings ascribed to them in the Urgent Motion.

CERTIFICATE OF SERVICE

I hereby certify that, on this same date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notifications of such filing to all CM/ECF participants in this case.

/s/ Hermann D. Bauer
Hermann D. Bauer